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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

2109971 ONTARIO INC. D/B/A XCELLA  
FURNITURE,

*Plaintiff,*

v.

BEST DEALS DISCOUNT FURNITURE  
LLC, AHMAD KAYALI, ROBERT  
BEITSCHER, MINDY HIRSCHTRITT,  
JONATHAN KAPLAN, MARK  
GOLDSTEIN, ELLIOT FERN, ALEX  
DOLGIN, AND EUGENE FRAYBERG,

*Defendants.*

DOCUMENT FILED ELECTRONICALLY

Civil Action No. \_\_\_\_\_

**VERIFIED  
COMPLAINT AND DEMAND  
FOR JURY TRIAL**

Plaintiff 2109971 Ontario Inc. d/b/a Xcella Furniture (“Plaintiff”) for its Complaint against the Defendants, Best Deals Discount Furniture LLC (“Best Deals”), Ahmad Kayali (“Kayali”),

Robert Beitscher (“Beitscher”), Mindy Hirschtritt (“Hirschtritt”), Jonathan Kaplan (“Kaplan”), Mark Goldstein (“Goldstein”), Elliot Fern (“Fern”), Alex Dolgin (“Dolgin”), and Eugene Frayberg (“Frayberg”) (all collectively “Defendants”), alleges as follows:

### **NATURE OF THIS ACTION**

1. This is a civil action for the infringement of United States Design Patent No. D909,088 (“the ‘088 Patent”) under the Patent Laws of the United States, 35 U.S.C. § 100 *et seq.*, arising from Defendants’ manufacture, use, offer to sell, sale and/or importation of infringing articles of furniture, and for civil conspiracy.

### **THE PARTIES**

2. Plaintiff 2109971 Ontario Inc. d/b/a Xcella Furniture is a Canadian corporation with a principal place of business in Toronto, Canada and a showroom through which it makes sales to authorized resellers at the Market On Green Building, 5<sup>th</sup> Floor, 212 East Green Drive, High Point, North Carolina 27260.

3. Upon information and belief, Defendant Best Deals Discount Furniture LLC is a New Jersey limited liability company, and has its principal place of business at 63 Market Street, Newark, NJ 07102.

4. Upon information and belief, Defendant Ahmad Kayali is an individual residing at 156 Ryerson Avenue, Paterson, NJ 07052, conducts business via the Newark, NJ showroom of Defendant Best Deals, with an address of 63 Market Street, Newark, NJ 07102, and is the registered agent of, and has an ownership interest in, Defendant Best Deals.

5. Upon information and belief, Defendant Robert Beitscher is an individual conducting business on behalf of, and in concert with, Best Deals via the Newark, NJ showroom of Defendant Best Deals, having an address of 54 Thomas Drive, Manalapan, NJ 07726, and who

conducts business via a cell phone number of (646) 372-6653 and an email address of robertbeitscher@yahoo.com.

6. Upon information and belief, Defendant Mindy Hirschtritt is an individual conducting business on behalf of, and in concert with, Best Deals via the Newark, NJ showroom of Defendant Best Deals, having an address of 54 Thomas Drive, Manalapan, NJ 07726, and who conducts business via a New Jersey cell phone number of (732) 685-7779 and an email address of hirschtritt@yahoo.com.

7. Upon information and belief, Defendant Jonathan Kaplan is an individual conducting business on behalf of, and in concert with, Best Deals via the Newark, NJ showroom of Defendant Best Deals, having an address at 54 Thomas Drive, Manalapan, NJ 07726, and who conducts business via a New Jersey cell phone number of (732) 598-9554 and an email address of jkaplan2@gmail.com.

8. Upon information and belief, Defendant Mark Goldstein is an individual conducting business on behalf of, and in concert with, Best Deals via the Newark, NJ showroom of Defendant Best Deals, having an address of 23 Yorkshire Drive, Wheatley Heights, NY 11798, and who conducts business via a cell phone number of (516) 639-5829 and an email address of mark.b.goldstein@gmail.com.

9. Upon information and belief, Defendant Elliot Fern is an individual conducting business on behalf of, and in concert with, Best Deals via the Newark, NJ showroom of Defendant Best Deals, having an address of 72 Crescent Way, Monroe, NJ 08831, and who conducts business via a New Jersey cell phone number of (732) 688-1801 and an email address of eftime2@comcast.net.

10. Upon information and belief, Defendant Alex Dolgin is an individual conducting business on behalf of, and in concert with, Best Deals via the Newark, NJ showroom of Defendant Best Deals, having an address of 1014 Avenue N #6, Brooklyn, NY 11230, and who conducts business via a cell phone number of (646) 637-8923 and an email address of dolginx@yahoo.com.

11. Upon information and belief, Defendant Eugene Frayberg is an individual conducting business on behalf of, and in concert with, Best Deals via the Newark, NJ showroom of Defendant Best Deals, having an address of 6 Vanderbilt Court; Old Bridge, NJ 08857-4401, and who conducts business via a New Jersey cell phone number of (732) 718-9928 and an email address of adaptiveconceptsnyj@yahoo.com.

12. Upon information and belief, Defendant Ahmad Kayali exercises control over, and is the moving, active, and conscious motivating force directing the wrongful acts of Defendant Best Deals and is personally responsible, and thereby liable, for the wrongful acts of Defendant Best Deals.

13. Upon information and belief, Defendants Kayali, Beitscher, Hirschritt, Kaplan, Goldstein, Fern, Dolgin and Frayberg also have conspired and acted in concert with, and among, each other to collectively cause wrongful acts of Defendant Best Deals asserted herein.

#### **JURISDICTION AND VENUE**

14. This Court has original jurisdiction over Plaintiff's federal patent infringement claims pursuant to 28 U.S.C. §§ 1331 (Federal Question) and 1338(a) (Action Arising Under Patent Act), because this is an action arising under the Patent Laws of the United States, 35 U.S.C. § 100 *et seq.*

15. This Court has subject matter jurisdiction over Plaintiff's common law claim that arises under the laws of the State of New Jersey pursuant to 28 U.S.C. § 1367(a) (Supplemental

Jurisdiction) and principles of supplemental jurisdiction. The state law claim is so related to, and intertwined with, Plaintiff's federal patent infringement claim as to be part of the same case or controversy under Article III of the United States Constitution.

16. This Court has personal jurisdiction over the Defendant Best Deals because: (a) Best Deals is a New Jersey limited liability company having its principal place of business in Newark, New Jersey; (b) upon information and belief, Best Deals regularly transacts and solicits business in New Jersey through the offer for sale, sale and/or importation of products in New Jersey; and (c) Best Deals is committing and has committed acts of patent infringement by offering for sale and selling infringing products within New Jersey, through its Facebook page, and through its brick-and-mortar showroom located in Newark, New Jersey.

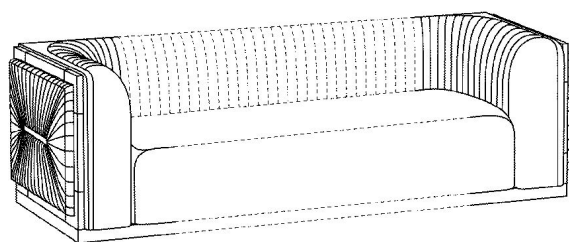
17. This Court has personal jurisdiction over each of Defendants Kayali, Beitscher, Hirschtritt, Kaplan, Goldstein, Fern, Dolgin, and Frayberg because upon information and belief, each Defendant regularly and deliberately avails themselves of the benefits of New Jersey by conducting business in New Jersey and, specifically, causing infringing acts in New Jersey, and further has personal jurisdiction over each of Kayali, Beitscher, Hirschtritt, Kaplan, Fern, and Frayberg because they are residents and domiciliaries of New Jersey.

18. Venue is proper in this Judicial District: (a) under 28 U.S.C. §1400(b) because all Defendants have committed acts of infringement by, at least, selling and offering for sale infringing products within this District and have a regular and established place of business in this District; (b) with respect to Defendants Best Deals, Kayali, Beitscher, Hirschtritt, Kaplan, Fern, and Frayberg, under 28 U.S.C. §1391(b)(2) because such Defendants reside in this District, and a substantial part of the events giving rise to the claim occurred in this Judicial District; and (c) with

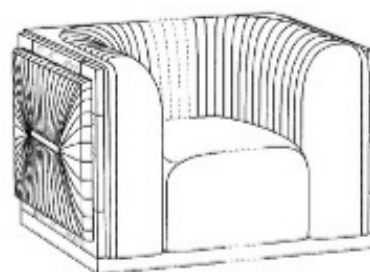
respect to Defendants Goldstein and Dolgin, under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claim occurred in this Judicial District.

### **THE PATENT-IN-SUIT**

19. On February 2, 2021, the '088 Patent, entitled "Seating Unit," was duly and legally issued by the U.S. Patent and Trademark Office ("USPTO"). A true and correct copy of the '088 Patent is attached as Exhibit A. Representative figures are reproduced below.



**FIG. 5**



**FIG. 10**

20. The '088 Patent is valid, enforceable and currently in full force and effect.
21. Plaintiff is the owner of all right, title and interest in and to the '088 Patent.
22. Plaintiff has successfully taken action against other known infringers of the '088 Patent. See, e.g., *2109971 Ontario Inc. v. Samira Furniture Ltd et al.*, Civ. A. No. 1:21-cv-04092-DLC (S.D.N.Y. April 8, 2022) (entering permanent injunction and awarding Plaintiff \$147,000 in damages); *2109971 Ontario Inc. v. Matrix Hospitality Furniture Inc. et al.*, Civ. A. No. 2:21-cv-11412-KM-CLW (D.N.J. Jan. 18, 2022) (entering default judgment and permanent injunction and awarding Plaintiff \$75,382 in damages and attorney's fees).

### **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

23. Plaintiff invents and designs furniture.

24. Plaintiff imports and commercializes unique and innovative furniture designs incorporated into, and covered by, the '088 Patent under the trademark "PALOMA™" through wholesale sales to authorized retailers.

25. Upon information and belief, Defendant Best Deals is an importer, wholesale and retail seller of, *inter alia*, furniture that infringes the '088 Patent, as demonstrated herein.

26. Upon information and belief, all Defendants, other than Defendant Best Deals, are agents of Defendant Best Deals who individually and collectively undertake infringing acts, including sales of, *inter alia*, furniture that infringes the '088 Patent.

#### **DEFENDANTS' INFRINGING ACTIVITIES**

27. Upon information and belief, Defendants have offered for sale, sold, and/or imported into or in the United States articles of furniture that infringe the '088 Patent.

28. Upon information and belief, an ordinary observer will perceive the overall appearance of the designs of Defendants' articles of furniture to be substantially the same as and/or a colorable imitation of the overall appearance of the designs of the '088 Patent.

29. Exhibit B hereto compares representative figures of the '088 Patent with representative images of the furniture made, used, sold, offered for sale and/or imported by or on behalf of Defendants.

30. In the eye of the ordinary observer familiar with the relevant prior art, giving such attention as a purchaser usually gives, the claimed design of the '088 Patent and Defendants' accused products are substantially the same, such that the ordinary observer would be deceived into believing that Defendants' accused products are the design claimed in the '088 Patent.

31. Defendants have colluded and acted in concert with each other to use, offer to sell, sell, and/or import the infringing articles of furniture and, as a result of that collusion and their

concerted actions, have knowingly engaged in the making, using, offering to sell, selling, and/or importing of the infringing articles of furniture into or in the United States.

32. Plaintiff did not give Defendants authorization or license to make, use, offer to sell, sell, or import the infringing articles of furniture.

33. Defendants, individually and collectively, have directly infringed, and continue to directly infringe, the '088 Patent by making, using, offering to sell, selling and/or importing articles of furniture into or in the United States having substantially the same ornamental design as the design claimed in the '088 Patent, in violation of 35 U.S.C. §§ 271(a) and 289.

34. Upon information and belief, Defendants Best Deals, Kayali, Beitscher, Hirschtritt, Kaplan, Goldstein, Fern, Dolgin, and Frayberg market and sell the infringing articles of furniture in New Jersey at least via a brick-and-mortar showroom located in Newark, New Jersey.

35. Upon information and belief, Defendants Best Deals, Kayali, Beitscher, Hirschtritt, Kaplan, Goldstein, Fern, Dolgin, and Frayberg market and sell the infringing articles of furniture via on-line advertising, sending emails to retail furniture stores, catalogs and brochures, as well as via the brick-and-mortar showroom located in Newark, New Jersey.

36. Upon information and belief, Defendants import the infringing articles of furniture into the United States by purchases and shipments from suppliers outside of the United States, including through shipments entering through ports of New Jersey.

37. On or about April 1, 2021 counsel for Plaintiff sent a letter to Defendant Best Deals, alerting Best Deals of Plaintiff's rights in the '088 Patent and advising Defendant Best Deals to cease and desist all sales of furniture that infringed the '088 Patent. A copy of the letter is attached as Exhibit C.



38. On or about April 2, 2021 Defendant Kayali responded to the letter, on behalf of Defendant Best Deals, and advised Plaintiff's counsel that it did not sell any furniture infringing the '088 Patent.

39. Plaintiff was unaware of any specific infringing sales by Defendants until in or about April 2022 when it became aware of an email from Defendants, dated December 2021, that included photographs of furniture specifically embodying the design of the '088 Patent. A copy of the email is attached as Exhibit D.

40. That email (Exhibit D) specifically directs prospective purchasers to contact Defendants Beitscher, Hirschtritt, Kaplan, Goldstein, Fern, Dolgin, and Frayberg to inquire about or purchase the advertised furniture specifically embodying the design of the '088 Patent.

41. Upon information and belief, Defendants have also offered furniture infringing the '088 Patent on Best Deals' Facebook page on or about May 27, 2022. A copy of the Facebook post is attached as Exhibit E.

42. Upon information and belief, despite knowing of the '088 Patent since April of 2021, Defendants have, individually and collectively in concert, engaged and continue to engage in the above infringing activities willfully and without the authorization of Plaintiff, and with the knowledge that the design of each infringing article of furniture is substantially the same as the designs of the '088 Patent.

43. Defendants' unauthorized acts as described herein have caused and will continue to cause irreparable damage to Plaintiff and its business unless restrained by this Court.

44. Since Plaintiff is the holder of exclusive rights in the patented design, Defendants' unauthorized acts as described herein have caused Plaintiff to lose profits because, but for

Defendants' infringing activities and sales, Defendants' sales of the specific design shown in the '088 Patent would have been made by or on behalf of Plaintiff.

45. Since Plaintiff is the holder of exclusive rights in the patented design, Defendants' unauthorized acts as described herein have caused Defendants to receive revenues and profits to which they are not entitled.

### **COUNT I**

#### **Infringement Under 35 U.S.C. § 271 of the '088 Patent**

46. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 45 above as though fully set forth herein.

47. Defendants, without authorization from Plaintiff, have used, offered for sale, sold, and/or imported into or in the United States, and continue to use, offer for sale, sell, and/or import into or in the United States, articles of furniture having designs that infringe the '088 Patent.

48. By the foregoing acts, Defendants have infringed and continue to infringe the '088 Patent in violation of 35 U.S.C. §§ 271(a) and 289.

49. Defendants' conduct violates 35 U.S.C. § 271 and has caused, and unless enjoined by this Court pursuant to 35 U.S.C. § 283, will continue to cause, Plaintiff to sustain irreparable damage, loss, and injury, for which Plaintiff has no adequate remedy at law.

50. As a result of Defendants' infringement of the '088 Patent, Plaintiff has suffered monetary damages in amounts to be determined at trial pursuant to 35 U.S.C. §§ 284 and 289.

51. Defendants have also profited from, and continue to profit from, their infringing conduct.

52. Upon information and belief, Defendants' aforesaid conduct has been undertaken knowingly, willfully, and in bad faith, and with knowledge of Plaintiff's rights. Such acts

constitute willful infringement, and pursuant to 35 U.S.C. §§ 284 and 285, entitle Plaintiff to enhanced damages and reasonable attorneys' fees.

**COUNT II**  
**(Civil Conspiracy)**

53. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 52 above as though fully set forth herein.

54. The wrongful acts of Defendants, collectively and in concert, as alleged herein, for their mutual benefit, were clearly known by Defendants to be wrongful and would cause, and have caused, damage to Plaintiff.

55. Count I is a cognizable tort that Defendants mutually conspired to participate in committing.

56. As a result each and every Defendant is vicariously, jointly and severally, liable to Plaintiff for the damages proximately caused thereby.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Enter judgment that Defendants have infringed Plaintiff's '088 Patent, and that such infringement has been willful;

B. Enter a permanent injunction against Defendants, pursuant to 35 U.S.C. § 283 and/or the equitable powers of this Court, enjoining Defendants and their respective officers, agents, affiliates, employees, and all others in active concert or participation with any of them, from further infringement of the '088 Patent;

C. Enter a judgment that Defendants have been unjustly enriched by their unlawful acts;

D. Award damages, in an amount to be determined, adequate to compensate Plaintiff for the infringement that has occurred, pursuant to 35 U.S.C. § 284, together with pre-judgment interest from the date the infringement began;

E. Order Defendants to account for and pay to Plaintiff any and all profits made by Defendants from sales of infringing products pursuant to 35 U.S.C. § 289;

F. Award Plaintiff increased damages under 35 U.S.C. § 284 for Defendants' willful and deliberate infringement of the '088 Patent;

G. Order Defendants to account for and pay to Plaintiff any and all ill-gotten gains and profits unjustly obtained and retained by Defendants through the acts complained of herein.

H. Declare this to be an exceptional case pursuant to 35 U.S.C. § 285 and/or other applicable laws;

I. Order Defendants to pay Plaintiff its costs and attorneys' fees in this action, together with pre-judgment and post judgment interest, pursuant to 35 U.S.C. § 285 and/or other applicable laws;

J. Enter an Order holding Defendants jointly and severally liable for all damages, costs and attorneys' fees awarded to Plaintiff; and

K. Award Plaintiff such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues so triable.

**LOCAL RULE 11.2 CERTIFICATION**

Pursuant to Local Civil Rule 11.2, Plaintiff certifies that the matter in controversy (infringement of the same patent asserted herein against defendants believe to be unrelated to the Defendants named herein) was also asserted in actions in the United States District Court for the Southern District of New York, Civil Action No. 1:21-cv-04092 and United States District Court for the District of New Jersey, Civil Action No. 2:21-cv-11412, each of which have been resolved.

**MICHAEL J BROWN LAW OFFICE LLC**

Dated: June 7, 2022

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*Attorneys for Plaintiff 2109971 Ontario Inc. d/b/a  
Xcella Furniture*

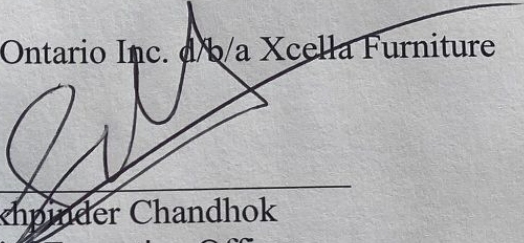
**VERIFICATION**

I, Sukhpinder Chandhok, hereby verify:

1. I am the C.E.O. of Plaintiff, 2109971 Ontario Inc. d/b/a Xcella Furniture, in this matter.
2. I have reviewed the foregoing verified Complaint.
3. I verify under penalty of perjury under the laws of the United States that the facts set forth in this Verified Complaint are true and correct to the best of my knowledge.

Executed on behalf of Plaintiff in Toronto, Canada on June 7<sup>th</sup>, 2022.

2109971 Ontario Inc. d/b/a Xcella Furniture

By:   
Its: Sukhpinder Chandhok  
Chief Executive Officer